



LAW OFFICE OF PATRICK SORSBY PLLC

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August 31, 2015

VIA ECF FILING

United States District Court
Northern District of New York
James T. Foley U.S. Court House
445 Broadway
Albany, NY 12207-2974

Att: Magistrate Judge Randolph F. Treece

Re : STATUS UPDATE
Civil Action No. 1:14-cv-434
Gorman v. Rensselaer County et. Al

FIRST PRETRIAL STATUS UPDATE

Dear Magistrate Treece,

Pursuant to this Court's order I am writing to provide a pretrial status update.

PAPER DISCOVERY

On May 26, 2015 I served on Mr. Martin approximately one thousand pages of documents in addition to the standard disclosures pursuant to FRCP rule 26. In addition to these documents I served on Defense counsel. On June 25th I finally received Defendants Rule 26 disclosures. On August 18th I served on Mr. Martin Plaintiffs First Discovery Request. To date I have received no discovery requests from Mr. Martin.

I did receive from Mr. Martin a letter indicating that in order to release rule 26 documents he need my client to sign a confidentiality agreement. The agreement would give the defendants unilateral authority to declare materials and documents confidential and not subject to disclosure outside of this proceeding. The Plaintiff has flatly rejected this attempt to obtain pre-settlement



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nondisclosure covenant. We will of course adhere to all applicable laws regarding the disclosure of protected information.

DEPOSITIONS

Plaintiffs Deposition

As of today I have not received a deposition notice for the Plaintiff. As a typical course the Plaintiff is deposed before Defendant Deponents. My client is willing to make himself reasonably available but we need a notice with dates first.

Non Party Deponents

Plaintiffs Counsel has conferred with counsel for Dr. McIntire in regards to his deposition. Dr. McIntire's counsel has agreed to make the Doctor available with resort to a subpoena. I am conferring with him to select dates that work for myself and Mr. Martin.

Defendant Deponents

On the second of July I served the attached deposition notices on Mr. Martin (attached hereto as Exhibit "A"). Mr. Martin agreed to make all of the deponents noticed available for deposing but had no available dates to give. As it was the beginning of July I told Mr. Martin to check with all the deponents to ensure that we could schedule them around any vacations. He said he would check with his deponents to ensure this.

At this time an additional issue arose as I was concerned that non-management county employee deponents would need to be subpoenaed. Mr. Martin objected to the serving of subpoenas in such case and promised to make all county employees available without resort to a subpoena. I consented to this because there is only one county employee deponent who is not a supervisor.

I have stressed in person, over the phone and over email that it is essential that we depose as many deponents as possible in August. Indeed I had proposed and Mr. Martin agreed that we should depose all minor deponents in August so as to leave September free for major party deponents.



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In spite of a number of phone calls and emails Mr. Martin has not indicated which deponents will be made available on which date. In the second week of August in response to my fervent inquiry as to the status of setting dates for his deponents Mr. Martin promised he would confirm deposition dates by that Friday August 14th. As my email of the 18th shows he never followed through on that promise (the August 18th email is attached hereto as Exhibit “B”). In the August 18th email I cautioned Mr. Martin that in addition to writing a poor status update letter that I would also be seeking an order to compel.

In response to my August 18th letter Mr. Martin responded with an email stating only that he could offer September 24, 25 and 30 but not indicating who would be available for those days (Mr. Martin’s Email is affixed hereto as Exhibit “C”).

I responded to Mr. Martin’s vague email on August 24th indicating my clients concern that because the county primary was coming up in September that the county was intentionally stalling (My email is attached hereto as Exhibit “D”). This email was also mailed in letter format by US mail with Plaintiff’s first discovery request. I attempted to make the best of Mr. Martin’s open offer by proactively scheduling deponents based upon my estimate of the time required. I also indicated that three days would not be enough given all the parties noticed for the depositions and asked for additional days.

By giving dates without indicating which of his deponents will be available on those dates Mr. Martin has basically forced me to schedule the deponents for him. I wanted to give Mr. Martin the benefit of doubt because things happen. Indeed I called him one last time on August 28th and left him a voice mail indicating that if he did not respond to my last email that my status update to this Court would not be satisfactory and I would seek an order to compel. Even in the face of such threat Mr. Martin still has not contacted me to schedule deponents.

Given the ongoing difficulties to schedule depositions I humbly request that the Court schedule a discovery conference as a precursor to my making a motion for an order to compel.



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Pursuant to Local rule 7.1 (b) I have made numerous good faith efforts to resolve these matters with counsel and unfortunately those efforts have not been fruitful

Respectfully Submitted,

LAW OFFICE OF PATRICK SORSBY

By _____ S/

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CC: **Via ECF**

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